the will and the codicil be admitted to probate. *Taft* v. *Stearns*, 125 N. E. 570 (Mass.).

A valid testamentary instrument may be made to speak as of a later date by a codicil. *Goods of Truro*, L. R. I. P. & D. 201. Moreover, in most jurisdictions any existing writing may be made part of a will by an express reference to it in the will. *Allen* v. *Maddock*, 11 Moo. P. C. 427. It is often immaterial whether a will or codicil is considered as republished by a later codicil, or as incorporated by reference. See *Ingoldby* v. *Ingoldby*, 4 Notes of Cases, 493; *Gordon* v. *Lord Rea*, 5 Sim. 274. But to preserve accuracy of terminology, a distinction might be drawn as follows: Any document that was once the valid will or codicil of the testator is republished; all other documents are incorporated by reference. The last named class would thus include wills made by married women, infants, and lunatics, wills procured by fraud, duress, or undue influence, as well as documents not properly executed. Accordingly, the court in the principal case should have spoken only of incorporation by reference and not of republication. The result reached by the court is undoubtedly correct. *Pope* v. *Pope*, 95 Ga. 87, 22 S. E. 245. *Cf. Taylor* v. *Kelly*, 31 Ala. 59.

WITNESSES — PRIVILEGE OF HUSBAND AND WIFE — USE FOR PURPOSE OF IMPEACHMENT OF TESTIMONY OBTAINED IN VIOLATION OF PRIVILEGE. — A wife testified in favor of her husband, who was the defendant in a criminal prosecution. For the purpose of impeachment the state introduced one of the grand jurors, who testified that the wife had made prior inconsistent statements before the grand jury, and who related what she had said on that occasion. *Held*, that this testimony should not have been received. *Doggett* v. *State*, 215 S. W. 454 (Tex.).

Two distinct common-law doctrines have often been confused: the disqualification of one spouse as a witness for the other; and the privilege of one not to be testified against by the other. See WIGMORE, EVIDENCE, §§ 600, 601, 2228, 2333, 2334. Statutes have almost universally removed the disqualification but the privilege generally remains. *Talbot* v. *United States*, 208 Fed. 144. The courts, nevertheless, sometimes deal with the matter on the assumption that a spouse is incompetent to testify against the other except in criminal actions against one for injury to the other. *Barber* v. *People*, 203 Ill. 543, 68 N. E. 93; *Brock* v. *State*, 44 Tex. Cr. Rep. 335, 71 S. W. 20. On the theory of incompetency the instant decision is obviously correct. But it seems more desirable as well as more accurate to regard the matter as simply one of privilege. A privilege connotes the possibility of waiver, so that by calling his wife as a witness for him the husband should be regarded as waiving this privilege not to have her testify against him. *National German-American Bank* v. *Lawrence*, 77 Minn. 282, 80 N. W. 363. Thus, when a wife testifies for her husband, she may ordinarily be impeached in the same manner as any other witness. *Bell* v. *State*, 213 S. W. (Tex.) 647. But a present waiver cannot, of course, cure any violations of the privilege in prior proceedings. And since the statements which, in the principal case, the wife made to the grand jury were improperly obtained in violation of the privilege, proper protection of the privilege demands that their use thereafter be prohibited even for purposes of impeachment. *Johnson* v. *State*, 66 Tex. Cr. Rep. 586, 148 S. W. 328. The decision is therefore not inconsistent with the theory of privilege.